

105TH CONGRESS  
1ST SESSION

# S. 82

To amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide child care assistance for dependents of their employees, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. KOHL introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide child care assistance for dependents of their employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Care Infrastruc-  
5 ture Act of 1997”.

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1 **SEC. 2. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES**  
 2 **FOR CHILD CARE ASSISTANCE.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 of the Internal Revenue Code of  
 5 1986 (relating to business related credits) is amended by  
 6 adding at the end the following new section:

7 **“SEC. 45D. EMPLOYER-PROVIDED CHILD CARE CREDIT.**

8 “(a) IN GENERAL.—For purposes of section 38, the  
 9 employer-provided child care credit determined under this  
 10 section for the taxable year is an amount equal to 50 per-  
 11 cent of the qualified child care expenditures of the tax-  
 12 payer for such taxable year.

13 “(b) DOLLAR LIMITATION.—The credit allowable  
 14 under subsection (a) for any taxable year shall not exceed  
 15 \$150,000.

16 “(c) DEFINITIONS.—For purposes of this section—

17 “(1) QUALIFIED CHILD CARE EXPENDITURE.—

18 The term ‘qualified child care expenditure’ means  
 19 any amount paid or incurred—

20 “(A) to acquire, construct, rehabilitate, or  
 21 expand property—

22 “(i) which is to be used as part of a  
 23 qualified child care facility of the taxpayer,

24 “(ii) with respect to which a deduction  
 25 for depreciation (or amortization in lieu of  
 26 depreciation) is allowable, and

1 “(iii) which does not constitute part of  
 2 the principal residence (within the meaning  
 3 of section 1034) of the taxpayer or any  
 4 employee of the taxpayer,

5 “(B) for the operating costs of a qualified  
 6 child care facility of the taxpayer, including  
 7 costs related to the training of employees, to  
 8 scholarship programs, and to the providing of  
 9 increased compensation to employees with high-  
 10 er levels of child care training,

11 “(C) under a contract with a qualified  
 12 child care facility to provide child care services  
 13 to employees of the taxpayer, or

14 “(D) under a contract to provide child care  
 15 resource and referral services to employees of  
 16 the taxpayer.

17 “(2) QUALIFIED CHILD CARE FACILITY.—

18 “(A) IN GENERAL.—The term ‘qualified  
 19 child care facility’ means a facility—

20 “(i) the principal use of which is to  
 21 provide child care assistance, and

22 “(ii) which meets the requirements of  
 23 all applicable laws and regulations of the

1 State or local government in which it is lo-  
 2 cated, including, but not limited to, the li-  
 3 censing of the facility as a child care  
 4 facility.

5 Clause (i) shall not apply to a facility which is  
 6 the principal residence (within the meaning of  
 7 section 1034) of the operator of the facility.

8 “(B) SPECIAL RULES WITH RESPECT TO A  
 9 TAXPAYER.—A facility shall not be treated as a  
 10 qualified child care facility with respect to a  
 11 taxpayer unless—

12 “(i) enrollment in the facility is open  
 13 to employees of the taxpayer during the  
 14 taxable year,

15 “(ii) the facility is not the principal  
 16 trade or business of the taxpayer unless at  
 17 least 30 percent of the enrollees of such fa-  
 18 cility are dependents of employees of the  
 19 taxpayer, and

20 “(iii) the use of such facility (or the  
 21 eligibility to use such facility) does not dis-  
 22 criminate in favor of employees of the tax-  
 23 payer who are highly compensated employ-  
 24 ees (within the meaning of section 414(q)).

1       “(d) RECAPTURE OF ACQUISITION AND CONSTRU-  
2       TION CREDIT.—

3               “(1) IN GENERAL.—If, as of the close of any  
4       taxable year, there is a recapture event with respect  
5       to any qualified child care facility of the taxpayer,  
6       then the tax of the taxpayer under this chapter for  
7       such taxable year shall be increased by an amount  
8       equal to the product of—

9               “(A) the applicable recapture percentage,  
10       and

11              “(B) the aggregate decrease in the credits  
12       allowed under section 38 for all prior taxable  
13       years which would have resulted if the qualified  
14       child care expenditures of the taxpayer de-  
15       scribed in subsection (c)(1)(A) with respect to  
16       such facility had been zero.

17       “(2) APPLICABLE RECAPTURE PERCENTAGE.—

18              “(A) IN GENERAL.—For purposes of this  
19       subsection, the applicable recapture percentage  
20       shall be determined from the following table:

“If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3 .....	100
Year 4 .....	85
Year 5 .....	70
Year 6 .....	55
Year 7 .....	40
Year 8 .....	25
Years 9 and 10 .....	10
Years 11 and thereafter .....	0.

1           “(B) YEARS.—For purposes of subpara-  
 2           graph (A), year 1 shall begin on the first day  
 3           of the taxable year in which the qualified child  
 4           care facility is placed in service by the taxpayer.

5           “(3) RECAPTURE EVENT DEFINED.—For pur-  
 6           poses of this subsection, the term ‘recapture event’  
 7           means—

8           “(A) CESSATION OF OPERATION.—The  
 9           cessation of the operation of the facility as a  
 10          qualified child care facility.

11          “(B) CHANGE IN OWNERSHIP.—

12           “(i) IN GENERAL.—Except as pro-  
 13           vided in clause (ii), the disposition of a  
 14           taxpayer’s interest in a qualified child care  
 15           facility with respect to which the credit de-  
 16           scribed in subsection (a) was allowable.

17           “(ii) AGREEMENT TO ASSUME RECAP-  
 18           TURE LIABILITY.—Clause (i) shall not  
 19           apply if the person acquiring such interest  
 20           in the facility agrees in writing to assume  
 21           the recapture liability of the person dispos-  
 22           ing of such interest in effect immediately  
 23           before such disposition. In the event of  
 24           such an assumption, the person acquiring  
 25           the interest in the facility shall be treated

1 as the taxpayer for purposes of assessing  
2 any recapture liability (computed as if  
3 there had been no change in ownership).

4 “(4) SPECIAL RULES.—

5 “(A) TAX BENEFIT RULE.—The tax for  
6 the taxable year shall be increased under para-  
7 graph (1) only with respect to credits allowed  
8 by reason of this section which were used to re-  
9 duce tax liability. In the case of credits not so  
10 used to reduce tax liability, the carryforwards  
11 and carrybacks under section 39 shall be appro-  
12 priately adjusted.

13 “(B) NO CREDITS AGAINST TAX.—Any in-  
14 crease in tax under this subsection shall not be  
15 treated as a tax imposed by this chapter for  
16 purposes of determining the amount of any  
17 credit under subpart A, B, or D of this part.

18 “(C) NO RECAPTURE BY REASON OF CAS-  
19 UALTY LOSS.—The increase in tax under this  
20 subsection shall not apply to a cessation of op-  
21 eration of the facility as a qualified child care  
22 facility by reason of a casualty loss to the ex-  
23 tent such loss is restored by reconstruction or  
24 replacement within a reasonable period estab-  
25 lished by the Secretary.

1       “(e) SPECIAL RULES.—For purposes of this  
2 section—

3               “(1) AGGREGATION RULES.—All persons which  
4 are treated as a single employer under subsections  
5 (a) and (b) of section 52 shall be treated as a single  
6 taxpayer.

7               “(2) PASS-THRU IN THE CASE OF ESTATES AND  
8 TRUSTS.—Under regulations prescribed by the Sec-  
9 retary, rules similar to the rules of subsection (d) of  
10 section 52 shall apply.

11              “(3) ALLOCATION IN THE CASE OF PARTNER-  
12 SHIPS.—In the case of partnerships, the credit shall  
13 be allocated among partners under regulations pre-  
14 scribed by the Secretary.

15       “(f) NO DOUBLE BENEFIT.—

16              “(1) REDUCTION IN BASIS.—For purposes of  
17 this subtitle—

18                      “(A) IN GENERAL.—If a credit is deter-  
19 mined under this section with respect to any  
20 property by reason of expenditures described in  
21 subsection (c)(1)(A), the basis of such property  
22 shall be reduced by the amount of the credit so  
23 determined.

24                      “(B) CERTAIN DISPOSITIONS.—If during  
25 any taxable year there is a recapture amount



1           determined with respect to any property the  
 2           basis of which was reduced under subparagraph  
 3           (A), the basis of such property (immediately be-  
 4           fore the event resulting in such recapture) shall  
 5           be increased by an amount equal to such recap-  
 6           ture amount. For purposes of the preceding  
 7           sentence, the term ‘recapture amount’ means  
 8           any increase in tax (or adjustment in  
 9           carrybacks or carryovers) determined under  
 10          subsection (d).

11          “(2) OTHER DEDUCTIONS AND CREDITS.—No  
 12          deduction or credit shall be allowed under any other  
 13          provision of this chapter with respect to the amount  
 14          of the credit determined under this section.

15          “(g) TERMINATION.—This section shall not apply to  
 16          taxable years beginning after December 31, 1999.”

17          (b) CONFORMING AMENDMENTS.—

18               (1) Section 38(b) of the Internal Revenue Code  
 19               of 1986 is amended—

20                   (A) by striking out “plus” at the end of  
 21                   paragraph (11),

22                   (B) by striking out the period at the end  
 23                   of paragraph (12), and inserting a comma and  
 24                   “plus”, and

1 (C) by adding at the end the following new  
2 paragraph:

3 “(13) the employer-provided child care credit  
4 determined under section 45D.”

5 (2) The table of sections for subpart D of part  
6 IV of subchapter A of chapter 1 is amended by add-  
7 ing at the end the following new item:

“Sec. 45D. Employer-provided child care credit.”

8 (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to taxable years beginning after  
10 December 31, 1996.

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